

It makes little sense to initiate entirely new proceedings in which a franchising authority would reiterate that which it has already stated. It makes far more sense to require a party that is challenging the certification to state in its filing the reasons for the challenge and to support each of its reasons with sufficient factual and legal support. To the extent the franchising authority deems it necessary or appropriate, it can respond to any such filing and the Commission can then make its determination.

The same is true with respect to an initial finding concerning effective competition. Franchising authorities will make an initial determination concerning effective competition based on the information and data available to them, and there is no reason to assume that they will make that determination in bad faith. However, at this juncture, it is far more likely that cable operators, as opposed to franchising authorities, will have access to data concerning competitors and competition. Hence, cable operators desiring to challenge an initial finding that effective competition does not exist should have the burden of proving their claims.

VII. RATES FOR BASIC EQUIPMENT

Section 623(b)(3) of the Cable Act provides that the Commission shall establish standards to establish, on the basis of actual cost, the price or rate (1) for the installation and lease of the equipment used by subscribers to receive the basic service tier, including a converter box and a remote control unit and, if requested by the subscriber an addressable converter box and (2) for the installation and monthly use of connections for additional television receivers. Many of the initial comments address the Commission's ability to regulate the cost of equipment necessary to receive the basic tier of service.

For example, Time Warner states that only equipment used to receive basic service may be regulated under this section of the Act.^{71/} Time Warner suggests that the Commission read this section very narrowly, arguing that if equipment (such as a remote control) is not even offered to a basic subscriber, then it could not be subject to cost based regulation. Time Warner further suggests that "the equipment price charged to basic-only subscribers can and should be distinguished from the equipment price charged to non-basic or pay subscribers who receive cable programming or pay programming services in addition to basic service,

^{71/} Time Warner Comments, p. 51.

even where the equipment can perform all three functions."72/

Neither the Cable Act nor the legislative history support Time Warner's position. Contrary to Time Warner's assertion that there is no substantive difference between rate regulation concerning "equipment necessary to receive the basic service tier" contained in the House Report73/ and rate regulation concerning "equipment used by subscribers to receive the basic service tier" as set forth in the Cable Act, this change and others demonstrate the clear intent of Congress to apply cost-based regulation to all equipment used to receive the basic tier of service even where that same equipment is also used to receive non-basic cable services.74/

The Cable Act explicitly states that equipment used to receive the basic service tier includes both a converter box and a remote control unit.75/ The Commission itself recognized that the change in language represents a

72/ Id. at p. 56.

73/ House Report, p. 83.

74/ Time Warner Comments, p. 51. To be sure, Time Warner grudgingly admits that the change was made to give the FCC greater authority to protect the interests of the consumer while at the same time insisting that the major reason for the change was to harmonize this language with the Cable Act's definition of "cable programming service." Time Warner does not attempt to explain how its position will protect the interests of the consumer.

75/ Cable Act, Section 623(b) (3) (A).

rejection of the House approach in favor of the Senate's language.^{76/} The only reasonable interpretation of this change in language is that Congress recognized that there would be an overlap in equipment used to provide both basic and other services, and that Congress intended that cost based regulation would apply to any and all such equipment, including equipment that may be utilized to receive other types of cable service.

There is no point in regulating the rate for basic cable service if the cable operator may obtain monopoly profits from the installation and lease of equipment or additional connections. The Coalition submits that Congress intended the Commission to interpret Section 623(b)(3) broadly and to regulate on a cost basis any and all equipment which may be used in receiving basic cable service. This will eliminate the obvious problems which would be caused by Time Warner's "the FCC regulates me, the FCC regulates me not" approach, which would permit different rates for the same equipment.

More importantly, such an approach might well result in a rate for equipment utilized to provide the basic service tier in excess of the rate for the same equipment when it is utilized to provide service in addition to the basic tier. This result clearly would be at odds with the consumer

^{76/} NPRM, p.36, n. 93, citing the Conference Report, p. 64.

protection purpose of the Cable Act and would permit cable operators to lure consumers to higher tiers of services by promising to reduce rates for the same equipment.

Of course, cable operators may choose to charge a rate that is less than cost for equipment, provided that the same rate is charged to all subscribers utilizing the equipment for any purpose. This condition will ensure that the cable operator obtains no unfair advantage over its competitors or undue influence over its subscribers through its ability to manipulate the rates for equipment.

CONCLUSION

WHEREFORE, the Coalition requests that the Commission revise its NPRM as discussed in these Reply Comments.

Respectfully submitted,

THE COALITION OF MUNICIPAL AND
OTHER LOCAL GOVERNMENTAL
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**APPENDIX TO
THE REPLY COMMENTS
OF THE COALITION OF MUNICIPAL AND OTHER
LOCAL GOVERNMENTAL FRANCHISING AUTHORITIES
TO NOTICE OF PROPOSED RULEMAKING**

The Coalition of Municipal and Other Local Governmental Franchising Authorities consists of the following:

City of Brewton, Alabama
*Town of Brookside, Alabama
City of Carbon Hill, Alabama
City of Chicopee, Massachusetts
City of Covington, Tennessee
*City of Danville, Virginia
City of Deming, New Mexico
City of Dublin, Georgia
*City of Fairhope, Alabama
City of Fultondale, Alabama
*City of Harlan, Iowa
City of Harrisburg, Arkansas
City of Hickman, Kentucky
City of Ignacio, Colorado
*Lake Park Municipal Utilities, Iowa
City of Marshall, Illinois
*City of Moulton, Iowa
City of Osage, Iowa
City of Preston, Iowa
Town of Raleigh, Mississippi
*City of Sumiton, Alabama
City of Tipton, Iowa
Westfield Gas & Electric, Westfield, Massachusetts
City of Willcox, Arizona
City of Winfield, Kansas
City of Woodbine, Iowa
Municipal Energy Agency of Mississippi (MEAM)

Municipal Electric Systems of Oklahoma, Inc. (MESO)

The members of MESO are:

Altus, Oklahoma	Copan, Oklahoma
Anadarko, Oklahoma	Cordell, Oklahoma
Blackwell, Oklahoma	Cushing, Oklahoma
Braman, Oklahoma	Duncan, Oklahoma
Burlington, Oklahoma	Edmond, Oklahoma
Byng, Oklahoma	Eldorado, Oklahoma
Claremore, Oklahoma	Fairview, Oklahoma
Clarksville, Arkansas	Fort Supply, Oklahoma
Collinsville, Oklahoma	Frederick, Oklahoma
Comanche, Oklahoma	Geary, Oklahoma

Goltry, Oklahoma
Granite, Oklahoma
Hominy, Oklahoma
Hope, Arkansas
Kaw City, Oklahoma
Kingfisher, Oklahoma
Laverne, Oklahoma
Lexington, Oklahoma
Lindsay, Oklahoma
Manchester, Oklahoma
Mangum, Oklahoma
Manitou, Oklahoma
Mannford, Oklahoma
Marlow, Oklahoma
Newkirk, Oklahoma
Miami, Oklahoma
Mooreland, Oklahoma
Okeene, Oklahoma
Olustee, Oklahoma
Orlando, Oklahoma
Paris, Arkansas
Pawhuska, Oklahoma
Pawnee, Oklahoma
Perry, Oklahoma
Ponca City, Oklahoma
Pond Creed, Oklahoma
Prague, Oklahoma

Pryor, Oklahoma
Purcell, Oklahoma
Ryan, Oklahoma
Sallisaw, Oklahoma
Siloam Springs, Arkansas
Skiatook, Oklahoma
South Coffeyville, Oklahoma
Spiro, Oklahoma
Stillwater, Oklahoma
Stilwell, Oklahoma
Stroud, Oklahoma
Tahlequah, Oklahoma
Tecumseh, Oklahoma
Tonkawa, Oklahoma
Wagoner, Oklahoma
Walters, Oklahoma
Watonga, Oklahoma
Waynoka, Oklahoma
Wetumka, Oklahoma
Wynnewood, Oklahoma
Yale, Oklahoma

* Additional sponsors not shown on Appendix to Initial Comments of the Coalition of Municipal and Other Local Governmental Franchising Authorities.